



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:

Rees et al.

SERIAL NO.: 10/006,252

FILED: December 4, 2001

TITLE: Antifungal Proteins

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GROUP ART UNIT: 1653

EXAMINER: Robinson, Hope A.

DOCKET NO.: SYN-034-DV

REPLY TO RESTRICTION/ELECTION REQUIREMENT

Commissioner for Patents
Arlington, VA 2202

Sir:

In the Office Action of January 28, 2004, the claims were restricted to one of two groups: Group I (claims 1-4 and 6-9), Group II (claims 5 and 9 [sic]).

Provisional Election

Applicants hereby provisionally elect to prosecute the invention of Group I, represented by claims 1-4 and 6-9. This election is made with traverse and without prejudice to, or disclaimer of, the other claims or inventions disclosed.

Remarks

Applicants assume that Group II should contain claims 5 and 10 and not claims 5 and 9 as indicated in the Office Action of January 24, 2004. The Examiner contends that the inventions of Groups I and II are unrelated because the products of Inventions I and II have different functions, structure and modes of operation.

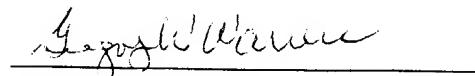
Applicants respectfully submit that while the inventions of Groups I and II are patentability distinct as claimed, these inventions are related and are not properly subject to a restriction requirement. The novelty imparted to the plants of claims 5 and 10 is due to the DNA sequence of claims 1 and 6, respectively. Thus, it would not pose an undue burden for a search to include the DNA sequence of claims 1 and 6 and plants comprising said sequences.

In addition, Applicants bring to the attention of the Examiner; examples of recently issued US Patents each of which includes claims to both nucleotide sequences and plants comprising those sequences (the cover page and claims for four US patents are enclosed herewith). In each of these cases, the US Classification includes both 800 and 435 subject matter. Therefore, Applicants respectfully request clarification as to whether the instant restriction requirement represents a policy shift away from that which seems to be reflected in the enclosed issued patents.

In light of these arguments and remarks, Applicants respectfully request reconsideration and modification of this restriction requirement.

If in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned agent.

Respectfully submitted,



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